No. 183

FILED
JAN 25 1901
JAMES H. McKENNEY,
Clerk.

Br. of McKenney, MacVeagh and Henderson for P. C. (mo

Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Jan. 25, 1901.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF FOR PLAINTIFF IN ERROR IN OPPOSITION TO MOTION TO DISMISS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-25-'01

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STATEMENT.

This suit was instituted by the Florida Central and Peninsular Railroad Company, the present owner of various constituent railroad companies and their properties and assets, as detailed in the record, in the circuit court of the State of Florida for the county of Leon on the 2d day of November, 1892.

The proceeding was by a bill in equity for the purpose, among other things, of enjoining the comptroller of the State and the sheriff of Leon county from collecting taxes levied upon certain railroad properties of the complainant for the years 1879, 1880, and 1881 under an assessment made by virtue of an act of the Florida legislature approved February 12, 1885, and a further act of said Legislative Assembly approved June 8, 1891, the properties in question having come into the possession or under the control of said complainant and its privies subsequent to the year 1881 and prior to February, 1885, without notice that the taxes for the years 1879, 1880, and 1881 had not been paid, no assessment for such taxes having been levied and no lien therefor existing at the time of the acquisition thereof.

The acts of the State of Florida referred to are as follows:

"*Laws of Florida*, 1885, *Ch.* 3558.

"AN ACT to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment.

"*The people of the State of Florida, represented in senate and assembly, do enact as follows:*

"SEC. I. That in all cases in which any railroad or the properties thereto belonging or appertaining in this State, in the tax years commencing March 1st, 1879, 1880 and 1881, or any of such years were not assessed for taxes for such years, it shall be the duty of the comptroller to cause the same or so much thereof as were not assessed to be assessed for State and county taxes, and twenty per centum of the taxes so assessed for said years and now unpaid shall be collected at the same time the taxes for the year 1885 shall be assessed and collected, and each year there-

after an additional twenty per centum of said taxes shall be collected at the same time and in the same manner as the taxes for such year are collected, until the whole amount of said unpaid taxes for the years 1879, 1880 and 1881 are paid.

"The taxes to be assessed under this act shall be the same in amount as they would have been had they been assessed in such years or any of them as to which there was a failure to assess.

"Approved February 12, 1885."

"*Laws of Florida*, 1891, *Ch.* 4073.

"AN ACT to provide for the collection of taxes assessed under and in pursuance of 'An act to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment, being chapter 3558, Laws of Florida.'

"*Be it enacted by the legislature of the State of Florida:*

"SECTION I. That the State and county taxes assessed by the comptroller of the State of Florida, upon any railroads and the properties thereof in said State, for the years 1879, 1880 and 1881, under and in pursuance of 'An act to provide for the assessment and collection of taxes on railroads, and the properties thereof for the years 1879, 1880 and 1881, as to which there was no assessment' but which have not been collected, shall be collected, and the payment thereof be enforced at the same time and in the same manner, as is now, or may hereafter be provided by law, for the collection and the enforcement of the payment of taxes assessed upon the railroads and properties thereof in the State of Florida.

"SECTION II. That this act shall take effect immediately after its passage.

"Approved June 8, 1891."

The complainant, by its bill of complaint, among other things, averred that the lines of railroad track and properties sought to be taxed, as aforesaid, had been constructed by its predecessors in title upon the faith of certain grants and exemptions guaranteed by prior existing law to any persons or companies who should construct lines of railway between certain points in the State of Florida, the statute laws referred to being known as the Internal Improvement Act of Florida, chapter 610, of the Laws of Florida, approved January 6, 1855, said statute being in full accord with the then existing constitution of said State which authorized and directed the legislature to provide for and encourage a liberal system of internal improvements.

Complainant further averred that neither said Internal Improvement Act nor the act incorporating the companies that built the lines of railway in question reserved to the legislature any right to alter or amend or repeal said acts, nor was there any other prior law then in force which authorized such repeal, alteration, or amendment, nor was there any law applicable to said railroads inconsistent with the provisions of said Internal Improvement Act or with said acts of incorporation with regard to taxes on railroad property and exemptions therefrom, and further that the provisions of the constitution of Florida adopted A. D. 1868, to the effect that no railroad property should thereafter be exempted from taxation, and the acts of the Florida legislature above quoted under which it was attempted to collect taxes for the years 1879, 1880, and 1881 from complainant, as the present owner of the properties in question, were "INCONSISTENT WITH THE CONSTITUTION OF THE UNITED STATES, in that it sought to deprive the companies

then owning the property now belonging to the complainant of vested contract rights to such exemption, and that said State constitution abrogated the contract at that time in force between the State and said railroad companies and illegally impaired the obligations imposed thereby upon the State of Florida, and is therefore null and void," such exemptions being part and parcel of the property value of said constituent railroad properties.

And further, that the complainant and its bond and stockholders, by virtue of the various acts of consolidation and other proceedings entered into by and between the various constituent companies and individuals owning the same, became from the date of such consolidation "*bona fide* holders of property interests in each of said constituent properties, which interests were then acquired, subject to the laws of such property as they then existed and entitled to the protection of such laws. Such existing laws were a part of the contract under which they thus acquired their said property." * * * "Wherefore it (complainant) says that any and every act of the State of Florida, either through amendment of its constitution or by act or resolution of its legislature in so far as it was thereby attempted to revoke, repeal or annul the said exemption from taxation, WAS IN VIOLATION OF THE RIGHTS OF YOUR ORATOR AS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES, which does not permit vested rights under previous contracts to be impaired by subsequent enactments" (Bill of Complaint, R., pp. 5, 8, 9, and 10).

The defendants, answering, denied that the State constitution of 1868 was INCONSISTENT WITH THE CONSTITUTION OF THE UNITED STATES OR ABROGATED ANY CONTRACT IN FORCE

BETWEEN THE STATE AND THE RAILROAD companies, as set forth in the bill of complaint, and claimed that "the alleged grant of exemption, if made, was made gratuitously and without consideration, and if there was any consideration it was not such a consideration as to preclude the people and their legislature by their subsequent organic act and legislation from subjecting the complainant and consolidated companies "to the same burdens as are imposed upon other corporations or natural persons who enjoy the benefits of State and county governments," and more to like effect (Answer, R., pp. 26–29).

The Federal question thus raised by the original bill and answer was preserved throughout the subsequent stages of the case, and was repeated and enlarged upon both in the Supplemental Bill in the nature of a Bill of Review (R., p. 56) and the Bill of Review subsequently filed at the suggestion and by the permission of the supreme court of the State (R., pp. 143, 147, *et seq.*).

The circuit court for Leon county sustained complainant's contention that the act of the legislature directing the levy of the tax was unconstitutional and enjoined the collection of the taxes for the years 1879, 1880, and 1881 (R., p. 40). On appeal this decision was reversed by the supreme court of the State on March 19, 1895, and "the cause is remanded for further proceedings in accordance with the opinion of the court filed herein" (R., p. 45).

In the course of the "further proceedings" complainant was permitted by the trial court to file a Supplemental Bill

in the nature of a Bill of Review (R., p. 55), to which defendants demurred, and the demurrer having been overruled by the trial court, they took an appeal to the supreme court of the State (R., p. 63), which court on March 17, 1897, reversed the action of the trial court and remanded the cause "with further directions that the circuit court dismiss the Supplemental Bill in the nature of a Bill of Review and enter a final decree in accordance with the former judgment of this court *upon which a mandate will again issue;* and it is further ordered that the appellee, within ninety days after the decree is entered by the circuit court, may have leave to apply to the said circuit court for leave to file a Bill of Review," &c., &c. (R., p. 66), and the mandate of said supreme court was accordingly issued, bearing date of May 22, 1897 (R., p. 68).

In accordance with the permission above recited, the complainant, by leave of court, filed its Bill of Review on September 18, 1897 (R., p. 142), wherein the claims of protection under the Constitution of the United States first above recited were reiterated (R., pp. 147, 151, 152, 180) and the pertinency of such claims was denied by defendants.

The cause having come on for hearing and final decree upon the pleadings and depositions, the circuit court, on January 6, 1900, entered its final decree, again enjoining the collection of the taxes in question for the years 1879, 1880, and 1881 (R., p. 215), from which decree the defendants in error prayed a further appeal to the supreme court of the State, where that decree was reversed on the 26th day of June, 1900 (R., p. 222).

To review this judgment of the State supreme court passed on the 26th day of June, 1900, a writ of error from

this court was prayed for and allowed October 24, 1900 (R., p. 223), and the transcript of record was filed in this Court October 29, 1900.

ARGUMENT.

The foregoing statement would seem to render further reply to grounds numbered First and Second of defendant's motion unnecessary.

That a Federal question was raised by the pleadings at the very inception of the case is too plain for discussion. Such question involved the invalidity, under the Constitution of the United States, of certain provisions of the State constitution and statutes, and the decision of the State supreme court was in favor of their validity, the chief justice of the State dissenting from the view of his associates (R., p. 262).

That the writ of error was sued out in time would seem to be equally plain.

The decree of June 26, 1900 (R., p. 222), was the only *final* decree entered in the cause which could have been reviewed here.

If we are right in the above suggestions, there is left but the Third and last ground mentioned in plaintiff in error's motion, viz., that although the record in the cause may disclose jurisdiction on the part of this court, yet it is manifest that the writ of error was sued out for delay merely. In view of the fact that the circuit court by each of its two decrees granted the relief prayed for by complainant's bill,

and that the chief justice of the State concurred in that view, it can hardly be said that the suing out of the writ of error from this court to review the validity of tax assessments aggregating almost $100,000 was "manifestly" for purposes of delay; nor can it be said that the Federal question involved was so clearly decided rightly that the writ of error should be dismissed as frivolous.

A casual comparison of the transcript of record in the case at bar with the report of the case of Railroad Company *vs.* Palmes (109 U. S., 244), relied upon by the defendant in error, will, while disclosing some points of similarity, also disclose marked and essential differences. For example, in the Palmes case the statute under review was entitled "An act for the assessment and collection of revenue," approved March 5, 1881, while in the case at bar the acts complained of were passed in 1885 and 1891 respectively, and were aimed at the assessment and collection of taxes on a certain class of properties for prior specified years for which no assessments had been levied and no lien existed.

In the case at bar much stress is laid upon the inherent contract rights of *bona fide* holders for value who had purchased in the absence of knowledge of the fact that the taxes in question had not been paid, and with respect to whom the acts of the legislature complained of were clearly retroactive. In the Palmes case no mention is made of *bona fide* holders for value, and no claim for relief is based upon the assertion of that principle.

Other essential differences might be pointed out, but it is submitted that the above is sufficient to remove this case

from the supposed domination and control of the Palmes case.

Upon the whole, it is submitted that the motion to dismiss or affirm should be denied.

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